Calendar No. 259

104TH CONGRESS, *1st Session* | SENATE | REPORT 104–181

PUBLIC RANGELANDS MANAGEMENT ACT OF 1995

DECEMBER 7, 1995.—Ordered to be printed

Mr. MURKOWSKI, from the Committee on Energy and Natural Resources, submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany S. 1459]

The Committee on Energy and Natural Resources, having considered the same, reports favorably thereon an original bill (S. 1459) to provide for uniform management of livestock grazing on Federal land, and for other purposes, and recommends that the bill do pass.

The text of the bill is as follows:

SECTION 1. SHORT TITLE.

(a) SHORT TITLE.—This title may be cited as the "Public Rangelands Management Act of 1995."

SEC. 2. EFFECTIVE DATE.

(a) IN GENERAL.—This Act and the amendments and repeals made by this Act shall become effective on March 1, 1996.

(b) INTERIM PROVISION.—Until the effective date specified in subsection (a), management of livestock grazing on Federal land shall be conducted in accordance with the law (including regulations) in effect on February 1, 1995: *Provided*, That subject to approval by the Secretary of Agriculture, membership of Resource Advisory Councils established by the Secretary of the Interior after August 21, 1995, shall be deemed to be in compliance with section 171(d) until March 1, 1997, or until such time as the Secretary determines otherwise, whichever occurs first: *Pro-*

vided further, That such resource advisory councils shall be authorized to continue in operation under current charters until the effective date specified in subsection (a).

SEC. 3. APPLICABLE REGULATIONS.

(a) BLM LANDS.—Except as otherwise provided by this Act, grazing of domestic livestock on lands administered by the Bureau of Land Management shall be in accordance with part 4, part 1780 and part 4100 of title 43, Code of Federal Regulations, as in effect on February 1, 1995.

(b) FOREST SERVICE LANDS.—Except as otherwise provided by this act, grazing of domestic livestock on lands administered by the Forest Service shall, to the extent possible, be in accordance with regulations, which the Secretary of Agriculture shall promulgate, which are substantially similar to the regulations referred to in subsection (a). Regulations promulgated under this subsection may differ from the regulations referred to in subsection (a) to the extent necessary to conform to the laws governing the National Forest System (other than title I).

(c) Pursuant to title I, the Secretary of the Interior and the Secretary of Agriculture shall coordinate the promulgation of regulations that are substantially similar.

TITLE I—MANAGEMENT OF GRAZING ON FEDERAL LAND

Subtitle A—General Provisions

SEC. 101. FINDINGS.

(a) FINDINGS.—Congress finds that—

(1) multiple use, as set forth in current law, has been and continues to be a guiding principle in the management of public lands and national forests;

(2) through the cooperative and concerted efforts of the Federal rangeland livestock industry, Federal and State land management agencies, and the general public, the Federal rangelands are in the best condition they have been in during this century, and their condition continues to improve;

(3) as a further consequence of those efforts, populations of wildlife are increasing and stabilizing across vast areas of the West;

(4) grazing preferences must continue to be adequately safeguarded in order to promote the economic stability of the western livestock industry;

(5) it is in the public interest to charge a fee for livestock grazing permits and leases on Federal land that is based on a formula that—

(A) reflects a fair return to the Federal Government and the true costs to the permittee or lessee; and

(B) promotes continuing cooperative stewardship efforts;

(6) opportunities exist for improving efficiency in the administration of the range programs on Federal land by—

(A) reducing planning and analysis costs and their associated paperwork, procedural, and clerical burdens; and

(B) refocusing efforts to the direct management of the resources themselves;

(7) in order to provide meaningful review and oversight of the management of the public rangelands and the grazing allotment on those rangelands, refinement of the reporting of costs of various components of the land management program is needed;

(8) greater local input into the management of the public rangelands is in the best interests of the United States;

(9) the western livestock industry that relies on Federal land plays an important role in preserving the social, economic, and cultural base of rural communities in the western States and further plays an integral role in the economies of the 17 western States with Federal rangelands;

(10) maintaining the economic viability of the western livestock industry is essential to maintaining open space and fish and wildlife habitat;

(11) since the enactment of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) and the amendment of section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604) by the National Forest Management Act of 1976 (16 U.S.C. 472a et seq.), the Secretary of the Interior and the Secretary of Agriculture have been charged with developing land use plans that are consistent with land use plans adopted by State, local, and tribal governments, but to date the planning efforts have not produced land use plans for Federal land that are in fact consistent with State, local, or tribal planning; and

(12) the levels of livestock grazing that were authorized to be permitted as of August 1, 1993 are consistent with this title and may be increased or decreased, as appropriate, consistent with this title.

(b) REPEAL OF EARLIER FINDINGS.—Section 2(a) of the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901(a)) is amended—

(1) by striking paragraphs (1), (2), (3), and (4);

(2) by redesignating paragraphs (5) and (6) as paragraphs (1) and (2), respectively;

(3) in paragraph (1) (as so redesignated), by adding ''and'' at the end; and

(4) in paragraph (2) (as so redesignated)—

(A) by striking ''harrassment'' and inserting ''harassment''; and

(B) by striking the semicolon at the end and inserting a period.

SEC. 102. APPLICATION OF ACT.

(a) This Act applies to—

(1) the management of grazing on Federal land by the Secretary of the Interior under—

(A) the Act of June 28, 1934 (commonly known as the "Taylor Grazing Act") (48 Stat. 1269, chapter 865; 43 U.S.C. 315 et seq.);

(B) the Act of August 28, 1937 (commonly known as the "Oregon and California Railroad and Coos Bay Wagon Road Grant Lands Act of 1937") (50 Stat. 874, chapter 876; 43 U.S.C. 1181a et seq.);

(C) the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.); and

(D) the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901 et seq.);

(2) the management of grazing on Federal land by the Secretary of Agriculture under—

(A) the 12th undesignated paragraph under the heading "SURVEYING THE PUBLIC LANDS." under the heading "UNDER THE DEPARTMENT OF THE INTERIOR." in the first section of the Act of June 4, 1897 (commonly known as the "Organic Administration Act of 1897") (30 Stat. 11, 35, chapter 2; 16 U.S.C. 551);

(B) the Act of April 24, 1950 (commonly known as the "Granger-Thye Act of 1950") (64 Stat. 85, 88, chapter 97; 16 U.S.C. 580g, 580h, 580l);

(C) the Multiple-Use Sustained Yield Act of 1960 (16 U.S.C. 528 et seq.);

(D) the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1600 et seq.);

(E) the National Forest Management Act of 1976 (16 U.S.C. 472a et seq.);

(F) the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.); and

(G) the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901 et seq.); and

(3) management of grazing by the Secretary on behalf of the head of another department or agency under a memorandum of understanding.

(b) Nothing is this title shall authorize grazing in any unit of the National Park System, National Wildlife Refuge System, or on any other Federal lands where such use is prohibited by statute, nor supersedes or amends any limitation on the levels of use for grazing that may be specified in other Federal law, nor expands or enlarges any such prohibition or limitation.

(c) Nothing in this title shall limit or preclude the use of and access to Federal land for hunting, fishing, recreational, watershed management or other appropriate

multiple use activities in accordance with applicable Federal and State laws and the principles of multiple use.

SEC. 103. OBJECTIVE.

The objective of this title is to—

(1) promote healthy, sustained rangeland;

(2) enhance productivity of Federal land by conservation of forage resources, reduction of soil erosion, and proper management of other resources such as control of noxious species invasion;

(3) provide stability to the livestock industry that utilizes the public rangeland;

(4) emphasize scientific monitoring of trends and condition to support sound rangeland management;

(5) maintain and improve the condition of riparian areas which are critical to wildlife habitat and water quality; and

(6) promote the consideration of wildlife populations and habitat, consistent with land use plans, principles of multiple-use, and other objectives stated in this section.

SEC. 104. DEFINITIONS.

IN GENERAL.—In this title:

(1) ACTIVE USE.—The term ''active use'' means the amount of authorized livestock grazing use made at any time.

(2) ACTUAL USE.—The term ''actual use'' means the number and kinds or classes of livestock, and the length of time that livestock graze on, an allotment.

(3) AFFECTED INTEREST.—The term ''affected interest'' means an individual or organization that has expressed in writing to the authorized officer a desire to be notified in writing of proposed decisions of the authorized officer related to a specific grazing allotment.

(4) ALLOTMENT.—The term ''allotment'' means an area of designated Federal land that includes management for grazing of livestock.

(5) ALLOTMENT MANAGEMENT PLAN.—The term ''allotment management plan'' has the same meaning as defined in section 103(k) of Pub. L. 94–579 (43 U.S.C. 1702(k)).

(6) AUTHORIZED OFFICER.—The term ''authorized officer'' means a person authorized by the Secretary to administer this title, the Acts cited in section 102, and regulations issued under this title and those Acts.

(7) BASE PROPERTY.—The term ''base property'' means—

(A) private land that has the capability of producing crops or forage that can be used to support authorized livestock for a specified period of the year; or

(B) water that is suitable for consumption by livestock and is available to and accessible by au-

thorized livestock when the land is used for livestock grazing.

(8) CANCEL; CANCELLATION.—The terms "cancel" and "cancellation" refer to a permanent termination, in whole or in part, of—

(A) a grazing permit or lease and grazing preference; or

(B) other grazing authorization.

(9) CONSULTATION, COOPERATION, AND COORDINATION.—The term "consultation, cooperation, and coordination" means, for the purposes of this title and section 402(d) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1752(d)), engagement in good faith efforts to reach consensus.

(10) COORDINATED RESOURCE MANAGEMENT.—The term "coordinated resource management"—

(A) means the planning and implementation of management activities in a specified geographic area that require the coordination and cooperation of the Bureau of Land Management or the Forest Service with affected State agencies, private land owners, and Federal land users; and

(B) may include, but is not limited to practices that provide for conservation, resource protection, resource enhancement or integrated management of multiple-use resources.

(11) FEDERAL LAND.—The term "Federal land"—

(A) means land outside the State of Alaska that is owned by the United States and administered by—

(i) the Secretary of the Interior, acting through the Director of the Bureau of Land Management; or

(ii) the Secretary of Agriculture, acting through the Chief of the Forest Service; but

(B) does not include land held in trust for the benefit of Indians.

(12) GRAZING PERMIT OR LEASE.—The term "grazing permit or lease" means a document authorizing use of the Federal land—

(A) within a grazing district under section 3 of the Act of June 28, 1934 (commonly known as the "Taylor Grazing Act") (48 Stat. 1270, chapter 865; 43 U.S.C. 315b), for the purpose of grazing livestock;

(B) outside grazing districts under section 15 of the Act of June 28, 1934 (commonly known as the "Taylor Grazing Act") (48 Stat. 1275, chapter 865; 43 U.S.C. 315m), for the purpose of grazing livestock; or

(C) in a national forest under section 19 of the Act of April 24, 1950 (commonly known as the "Granger-Thye Act of 1950") (64 Stat. 88, chapter

97; 16 U.S.C. 5801), for the purposes of grazing livestock.

(13) GRAZING PREFERENCE.—The term ''grazing preference'' means the number of animal unit months of livestock grazing on Federal land as adjudicated or apportioned and attached to base property owned or controlled by a permittee or lessee.

(14) LAND BASE PROPERTY.—The term ''land base property'' means base property described in paragraph (7)(A).

(15) LAND USE PLAN.—The term ''land use plan'' means—

(A) with respect to Federal land administered by the Bureau of Land Management, one of the following developed in accordance with the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.)—

(i) a resource management plan; or

(ii) a management framework plan that is in effect pending completion of a resource management plan; and

(B) with respect to Federal land administered by the Forest Service, a land and resource management plan developed in accordance with section 6 of the Forest and Rangeland Resources Planning Act of 1974 (16 U.S.C. 1604).

(16) LIVESTOCK CARRYING CAPACITY.—The term ''livestock carrying capacity'' means the maximum sustainable stocking rate that is possible without inducing long-term damage to vegetation or related resources.

(17) MONITORING.—The term ''monitoring'' means the orderly collection of data using scientifically-based techniques to determine trend and condition of rangeland resources. Data may include historical information, but must be sufficiently reliable to evaluate—

(A) effects of ecological changes and management actions; and

(B) effectiveness of actions in meeting management objectives.

(18) RANGE IMPROVEMENT.—The term ''range improvement''—

(A) means an authorized activity or program on or relating to rangeland that is designed to—

(i) improve production of forage;

(ii) change vegetative composition;

(iii) control patterns of use;

(iv) provide water;

(v) stabilize social and water conditions; or

(vi) provide habitat for livestock, wild horses and burros, and wildlife; and

(B) includes structures, treatment projects, and use of mechanical means to accomplish the goals described in subparagraph (A).

(19) RANGELAND STUDY.—The term ''rangeland study'' means a documented study or analysis of data obtained in actual use, utilization, climatic conditions, other special events, production trend, and rangeland condition and trend to determine whether management objectives are being met, that—

(A) relies on the examination of physical measurements of range attributes and not on cursory visual scanning of land, unless the condition to be assessed is patently obvious and requires no physical measurements;

(B) utilizes a scientifically based and verifiable methodology; and

(C) is accepted by an authorized officer.

(20) SECRETARY; SECRETARIES.—The terms ''Secretary'' or ''Secretaries'' mean—

(A) the Secretary of the Interior, in reference to livestock grazing on Federal land administered by the Director of the Bureau of Land Management; and

(B) the Secretary of Agriculture, in reference to livestock grazing on Federal land administered by the Chief of the Forest Service or the National Grasslands referred to in title II.

(21) SUBLEASE.—The term ''sublease'' means an agreement by a permittee or lessee that—

(A) allows a person other than the permittee or lessee to graze livestock on Federal land without controlling the base property supporting the grazing permit or lease; or

(B) allows grazing on Federal lands by livestock not owned or controlled by permittee or lessee.

(22) SUSPEND; SUSPENSION.—The terms ''suspend'' and ''suspension'' refer to a temporary withholding, in whole or in part, of a grazing preference from active use, ordered by the Secretary or done voluntarily by a permittee or lessee.

(23) UTILIZATION.—The term ''utilization'' means the percentage of a year's forage production consumed or destroyed by herbivores.

(24) WATER BASE PROPERTY.—The term ''water base property'' means base property described in paragraph (7)(B).

SEC. 105. FUNDAMENTALS OF RANGELAND HEALTH.

(a) STANDARDS AND GUIDELINES.—The Secretary shall establish standards and guidelines for addressing rangeland condition and trend on a State or regional level in consultation with the Resource Advisory Councils established in section 171 and in cooperation with the State departments of agriculture or other appropriate State agencies and academic institutions in each interested State.

(b) COORDINATED RESOURCE MANAGEMENT.—The Secretary shall, where appropriate, authorize and encourage

the use of coordinated resource management practices. Coordinated resource management practices shall be—

(1) scientifically based;

(2) consistent with goals and objectives of the applicable land use plan;

(3) for the purposes of promoting good stewardship of multiple-use rangeland resources; and

(4) authorized under a cooperative agreement with a permittee or lessee, or an organized group of permittees or lessees in a specified geographic area. Such agreement may include other individuals, organizations, or Federal land users.

(c) COORDINATION OF FEDERAL AGENCIES.—Where coordinated resource management involves private land, State land, and Federal land managed by the Bureau of Land Management or the Forest Service, the Secretaries are hereby authorized and directed to enter into cooperative agreements to coordinate the associated activities of—

(1) Bureau of Land Management;

(2) the Forest Service; and

(3) the Natural Resources Conservation Service.

(d) RULE OF CONSTRUCTION.—Nothing in this title or any other law implies that a minimum national standard or guidelines is necessary.

SEC. 106. LAND USE PLANS.

(a) PRINCIPLE OF MULTIPLE USE AND SUSTAINED YIELD.—An authorized officer shall manage livestock grazing on Federal land under the principles of multiple use and sustained yield and in accordance with applicable land use plans.

(b) CONTENTS OF LAND USE PLAN.—With respect to grazing administration, a land use plan shall—

(1) consider the impacts of all multiple uses, including livestock and wildlife grazing, on the environment and condition of public rangelands, and the contributions of these uses to the management, maintenance and improvement of such rangelands;

(2) establish allowable grazing use (in combination with other multiple uses), related levels of production or use to be maintained, areas of use, and resource conditions goals and objectives to be obtained; and

(3) set forth programs and general management practices needed to achieve the purposes of this title.

(c) APPLICATION OF NEPA.—Land use plans, and amendments thereto, shall continue to be developed in conformance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(d) CONFORMANCE WITH LAND USE PLAN.—Livestock grazing activities and management actions approved by the authorized officer, including the issuance, renewal, or transfer of grazing permits or leases, shall not constitute major Federal actions requiring consideration under the National Environmental Policy Act of 1969 (42 U.S.C. 4321

et seq.) in addition to that which is necessary to support the land use plan, and amendments thereto.

(e) Nothing in this section is intended to override the planning and public involvement processes of any other Federal law pertaining to Federal lands.

Subtitle B—Qualifications and Grazing Preferences

SEC. 111. SPECIFYING GRAZING PREFERENCE.

(a) IN GENERAL.—A grazing permit or lease shall specify—

(1) a historical grazing preference;

(2) active use, based on the amount of forage available for livestock grazing established in the land use plan;

(3) suspended use; and

(4) voluntary and temporary nonuse.

(b) ATTACHMENT OF GRAZING PREFERENCE.—A grazing preference identified in a grazing permit or lease shall attach to the base property supporting the grazing permit or lease.

(c) ATTACHMENT OF ANIMAL UNIT MONTHS.—The animal unit months of a grazing preference shall attach to—

(1) the acreage of land base property on a pro rata basis; or

(2) water base property on the basis of livestock forage production within the service area of the water.

Subtitle C—Grazing Management

SEC. 121. ALLOTMENT MANAGEMENT PLANS.

If the Secretary elects to develop an allotment management plan for a given area, he shall do so in careful and considered consultation, cooperation, and coordination with the lessees, permittees, and landowners involved, the resource advisory councils and grazing advisory councils established pursuant to section 171 and section 172, and any State or States having lands within the area to be covered by such allotment management plan.

SEC. 122. RANGE IMPROVEMENTS.

(a) RANGE IMPROVEMENT COOPERATIVE AGREEMENTS.—

(1) IN GENERAL.—The Secretary may enter into a cooperative agreement with a permittee or lessee for the construction, installation, modification, maintenance, removal, or use of a permanent range improvement of development of a rangeland to achieve a management or resource condition objective.

(2) COST-SHARING.—A range improvement cooperative agreement shall specify how the costs or labor, or both, shall be shared between the United States and the other parties to the agreement.

(3) TITLE.—

(A) IN GENERAL.—Subject to valid existing rights, title to an authorized permanent range improvement under a range improvement cooperative agreement shall be in the name of the permittee or lessee and of the United States, respectively, in proportion to the value of the contributions (funding, material, and labor) toward the initial cost of construction by the United States and the permittee or lessee, respectively.

(B) VALUE OF FEDERAL LAND.—For the purpose of subparagraph (A), only a contribution to the construction, installation, modification, or maintenance of a permanent rangeland improvement itself, and not the value of Federal land on which the improvement is placed, shall be taken into account.

(C) MAINTENANCE.—Maintenance of range improvements in the form of time as labor or monetary expenditures shall be applied to the value and percentage of ownership proportionate to the value of the contribution by a party to the cooperative agreement.

(4) NONSTRUCTURAL RANGE IMPROVEMENTS.—A range improvement cooperative agreement shall ensure that the respective parties enjoy the benefits of any nonstructural range improvement, such as seeding, spraying, and chaining, in proportion to each party's contribution to the improvement.

(5) INCENTIVE.—A range improvement cooperative agreement shall contain terms and conditions that are designed to provide a permittee or lessee an incentive for investing in range improvements.

(b) RANGE IMPROVEMENT PERMITS.—

(1) APPLICATION.—A permittee or lessee may apply for a range improvement permit to construct, install, modify, maintain, or use a range improvement that is needed to achieve management objectives within the permittee's or lessee's allotment.

(2) FUNDING.—A permittee or lessee shall agree to provide full funding for construction, installation, modification, or maintenance of a range improvement covered by a range improvement permit.

(3) AUTHORIZED OFFICER TO ISSUE.—A range improvement permit shall be issued at the discretion of the authorized officer.

(4) TITLE.—Title to an authorized permanent range improvement under a range improvement permit shall be in the name of the permittee or lessee.

(5) CONTROL.—The use by livestock of stock ponds or wells authorized by a range improvement permit shall be controlled by the permittee or lessee holding a range improvement permit.

(c) ASSIGNMENT OF RANGE IMPROVEMENTS.—An authorized officer shall not approve the transfer of a grazing pref-

erence, or approve use by the transferee of existing range improvements unless the transferee has agreed to compensate the transferor for the transferor's interest in the authorized permanent improvements within the allotment as of the date of the transfer.

SEC. 123. MONITORING AND INSPECTION.

(a) MONITORING.—Monitoring of a grazing allotment shall be performed by qualified Federal, State, or local agency personnel, qualified consultants as agreed to in an approved allotment management plan, or qualified range consultants retained by the United States. Any report on such monitoring shall include any comments from comparably qualified range consultants participating in the monitoring activities at the request of the permittee or lessee.

(b) INSPECTION.—Inspection of a grazing allotment shall be performed by qualified Federal, State or local agency personnel, or qualified consultants retained by the United States.

(c) MONITORING CRITERIA AND PROTOCOLS.—Rangeland monitoring shall be conducted according to regional or State criteria and protocols that are scientifically based. Criteria and protocols shall be developed by the Secretary in consultation with the Resource Advisory Councils established in section 171, and in cooperation with State departments of agriculture or other appropriate State agencies and academic institutions in each interested State.

(d) PERMITTEE OR LESSEE PARTICIPATION IN ALLOTMENT MONITORING.—Except as provided in subsection (e), the affected permittee or lessee, or authorized representative thereof, shall be invited and allowed to participate in all inspections or activities in which information or data are gathered for consideration in management actions or decisions by the authorized officer. Information or data, in any form, gathered in violation of this subsection shall not be relied upon the authorized officer, and shall be excluded from the permittee's or lessee's allotment file.

(e) EXCEPTIONS.—Notwithstanding the requirement of subsection (d), and provided that written notice of inspection or monitoring activities was provided to the permittee or lessee within 72 hours of the initial observation, inspection or monitoring documentation, data, information, or reports may be relied upon if—

(1) the affected permittee or lessee declines the invitation of the authorized officer to participate in specific inspection or monitoring activities; or

(2) at the time the inspection or monitoring data or information were collected, the authorized officer had substantial grounds to believe that a violation of section 141 was occurring.

SEC. 124. WATER RIGHTS.

(a) IN GENERAL.—No water rights on Federal land shall be acquired, perfected, owned, controlled, maintained, ad-

ministered, or transferred in connection with livestock grazing management other than in accordance with State law concerning the use and appropriation of water within the State.

(b) STATE LAW.—In managing livestock grazing on Federal land, the Secretary shall follow State law with regard to water right ownership and appropriation.

(c) AUTHORIZED USE OR TRANSPORT.—The Secretary may not impose or require any transfer, restriction, or limitation on the use of any water right as a term or condition of any permit, or as a requirement for approval of the transportation, storage, or conveyance of water on or across Federal land.

(d) RULE OF CONSTRUCTION.—Nothing in this title shall be construed to create an expressed or implied reservation of water rights in the United States.

Subtitle D—Authorization of Grazing Use

SEC. 131. GRAZING PERMITS OR LEASES.

(a) TERM.—A grazing permit or lease shall be issued for a term of 15 years unless—

(1) the land is pending disposal;

(2) the land will be devoted to a public purpose that precludes grazing prior to the end of 15 years; or

(3) the Secretary determines that it would be in the best interest of sound land management to specify a shorter term, if the decision to specify a shorter term is supported by appropriate and accepted resource analysis and evaluation, and a shorter term is determined to be necessary, based upon monitoring information, to achieve land management goals and objectives.

(b) RENEWAL.—A permittee or lessee holding a grazing permit or lease shall be given first priority at the end of the term for renewal of the grazing permit or lease if—

(1) the land for which the grazing permit or lease is issued remains available for domestic livestock grazing;

(2) the permittee or lessee is in compliance with this title and the terms and conditions of the grazing permit or lease; and

(3) the permittee or lessee accepts the terms and conditions included by the authorized officer in the new grazing permit or lease.

SEC. 132. SUBLEASING.

(a) IN GENERAL.—The Secretary shall only authorize subleasing of a Federal grazing permit or lease, in whole or in part—

(1) if the permittee or lessee is unable to make full grazing use due to ill health or death; or

(2) under a cooperative agreement with a grazing permittee or lessees (or group of grazing permittees or lessees), pursuant to section 105(b).

(b) CONSIDERATIONS.—

(1) Livestock owned by a spouse, child, or grandchild of a permittee or lessee shall be considered as owned by the permittee or lessee for the sole purposes of this title.

(2) Leasing or subleasing of base property, in whole or in part, shall not be considered as subleasing of a Federal grazing permit or lease: *Provided*, That the grazing preference associated with such base property is transferred to the person controlling the leased or subleased base property.

SEC. 133. OWNERSHIP AND IDENTIFICATION OF LIVESTOCK.

(a) IN GENERAL.—A permittee or lessee shall own or control and be responsible for the management of the livestock that graze the Federal land under a grazing permit or lease.

(b) MARKING OR TAGGING.—An authorized officer shall not impose any marking or tagging requirement in addition to the requirement under State law.

SEC. 134. TERMS AND CONDITIONS.

(a) IN GENERAL.—

(1) A grazing permit or lease shall be subject to such reasonable terms or conditions as may be required by this Act or as contained in an approved allotment management plan developed pursuant to section 121.

(2) No term or condition of a grazing permit or lease shall be imposed pertaining to past practice or present willingness of an applicant, permittee or lessee to relinquish control of public access to Federal land across private land.

(b) MODIFICATION.—Following careful and considered consultation, cooperation, and coordination with permittees and lessees, an authorized officer may modify the terms and conditions of a grazing permit or lease if monitoring data show that the grazing use is not meeting the land use plan or management objectives.

SEC. 135. FEES AND CHARGES.

(a) GRAZING FEES.—The fee for each animal unit month in a grazing fee year to be determined by the Secretary shall be equal to the three-year average of the total gross value of production for beef cattle for the three years preceding the grazing fee year, multiplied by the 10-year average of the United States Treasury Securities 6-month bill ''new issue'' rate, and divided by 12. The gross value of production for beef cattle shall be determined by the Economic Research Service of the Department of Agriculture in accordance with subsection (e)(1).

(b) DEFINITION OF ANIMAL UNIT MONTH.—For the purposes of billing only, the term ''animal unit month'' means one month's use and occupancy of range by—

(1) one cow, bull, steer, heifer, horse, burro, or mule, seven sheep, or seven goats, each of which is six months of age or older on the date on which the animal begins grazing on Federal land;

(2) any such animal regardless of age if the animal is weaned on the date on which the animal begins grazing on Federal land; and

(3) any such animal that will become 12 months of age during the period of use authorized under a grazing permit or lease.

(c) LIVESTOCK NOT COUNTED.—There shall not be counted as an animal unit month the use of Federal land for grazing by an animal that is less than six months of age on the date on which the animal begins grazing on Federal land and is the natural progeny of an animal on which a grazing fee is paid if the animal is removed from the Federal land before becoming 12 months of age.

(d) OTHER FEES AND CHARGES.—

(1) CROSSING PERMITS, TRANSFERS, AND BILLING NOTICES.—A service charge shall be assessed for each crossing permit transfer of grazing preference, and replacement or supplemental billing notice except in a case in which the action in initiated by the authorized officer.

(2) AMOUNT OF FLPMA FEES AND CHARGES.—The fees and charges under section 304(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1734((a)) shall reflect processing costs and shall be adjusted periodically as costs change.

(3) NOTICE OF CHANGE.—Notice of a change in a service charge shall be published in the Federal Register.

(e) CRITERIA FOR ERS.—

(1) The Economic Research Service of the Department of Agriculture shall continue to compile and report the gross value of production of beef cattle, on a dollars-per-bred-cow basis for the United States, as is currently published by the Service in: "Economic Indicators of the Farm Sector: Cost of Production—Major Field Crops and Livestock and Dairy" (Cow-calf production cash costs and returns).

(2) For the purposes of determining the grazing fee for a given grazing fee year, the gross value of production (as described above) for the previous calendar year shall be made available to the Secretary of the Interior and the Secretary of Agriculture, and published in the Federal Register, on or before February 15 of each year.

Subtitle E—Civil Violations and Failures of Compliance

SEC. 141. CIVIL VIOLATIONS AND FAILURES OF COMPLIANCE.

(a) IN GENERAL.—A person that knowingly and willfully does one of the following shall be subject to a civil sanction under subsection (b):

(1) Fails to make grazing use under the terms and conditions of a grazing permit or lease, or under a cooperative agreement pursaunt to section 105(b).

(2) Places supplemental feed on land covered by a grazing permit or lease without authorization.

(3) Fails to comply with a term, condition, or stipulation of a range improvement cooperative agreement or range improvement permit.

(4) Enters into an unauthorized sublease.

(5) Allows unauthorized livestock or other privately owned or controlled animals to graze on or be driven across Federal land.

(b) PENALTIES.—

(1) IN GENERAL.—In a case of a violation or failure of compliance described in subsection (a), an authorized officer may—

(A) withhold issuance of a grazing permit or lease;

(B) suspend the grazing use authorized under a grazing permit or lease, in whole or in part; or

(C) cancel a grazing permit or lease and grazing preference, or other grazing authorization, in whole or in part.

(2) CANCELLATION, SUSPENSION OR MODIFICATION.—A grazing lease or permit may be canceled, suspended, or modified for—

(A) any violation of this title, or for

(B) any violation of a term or condition of the permit or lease, or for

(C) conviction for failure to comply with Federal laws or regulations relating to protection of air, water, soil and vegetation, fish and wildlife, and other environmental values when exercising the grazing use authorized by the permit or lease.

(3) SECOND OR SUBSEQUENT WILLFUL VIOLATION.—In a case of a second or subsequent willful civil violation described in subsection (a), an authorized officer shall—

(A) suspend the grazing use authorized under a grazing permit or lease, in whole or in part; or

(B) cancel a grazing permit or lease and grazing preference, in whole or in part.

(4) CONSIDERATION OF SEVERITY.—The duration of a violation, failure to comply with a notice of violation, and the extent of damage to resources caused by such violation shall be considered in determining any penalty under this section.

(5) SUBLEASES.—

(A) IN GENERAL.—A person who violates subsection (a)(4) shall be required to pay to the United States the dollar equivalent value, as determined by the authorized officer, of all compensation received for the sublease that is in excess of the sum of the established grazing fee and the cost incurred by the person for the installation and maintenance of authorized range improvements.

(B) FAILURE TO PAY.—If the dollar equivalent value is not received by the authorized officer within 30 days of receipt of a final decision, the grazing permit or lease shall be canceled.

(C) ADDITIONAL PENALTY.—Payment under this paragraph shall be in addition to any other penalties the authorized officer may impose under this subsection.

(6) FAILURE TO USE.—After consultation, cooperation, and coordination with the permittee or lessee, the authorized officer may cancel a grazing preference, in whole or in part, when a permittee or lessee has failed to make grazing use under the terms and conditions of a grazing permit or lease, or under a cooperative agreement pursuant to section 105(b).

Subtitle F—Unauthorized Grazing Use

SEC. 151. NONMONETARY SETTLEMENT.

An authorized officer may approve a nonmonetary settlement of a case of a violation described in section 141 if the authorized officer determines that each of the following conditions is satisfied:

(1) NO FAULT.—Evidence shows that the unauthorized use occurred through no fault of the livestock operator.

(2) INSIGNIFICANCE.—The forage use is insignificant.

(3) NO DAMAGE.—Federal land has not been damaged.

(4) BEST INTERESTS.—Nonmonetary settlement is in the best interests of the United States.

SEC. 152. IMPOUNDMENT AND SALE.

Any impoundment and sale of unauthorized livestock on Federal land shall be conducted in accordance with State law.

Subtitle G—Procedure

SEC. 161. PROPOSED DECISIONS.

(a) SERVICE ON APPLICANTS, PERMITTEES, LESEES, AND LIENHOLDERS.—The authorized officer shall serve, by certified mail or personal delivery, a proposed decision on any applicant, permittee, lessee, or lienholder (or agent of

record of the applicant, permittee, lessee, or lienholder) that is affected by—

(1) a proposed action on an application for a grazing permit or lease, or range improvement permit; or

(2) a proposed action relating to a term or condition of a grazing permit or lease, or a range improvement permit.

(b) NOTIFICATION OF AFFECTED INTERESTS.—The authorized officer shall send copies of a proposed decision to affected interests.

(c) CONTENTS.—A proposed decision described in subsection (a) shall—

(1) state reasons for the action, including reference to applicable law (including regulations); and

(2) be based upon, and supported by rangeland studies, where appropriate, and;

(3) state that any protest to the proposed decision must be filed not later than 30 days after service.

SEC. 162. PROTESTS.

An applicant, permittee, or lessee may protest a proposed decision under section 161 in writing to the authorized officer within 30 days after service of the proposed decision.

SEC. 163. FINAL DECISIONS.

(a) NO PROTEST.—In the absence of a timely filed protest, a proposed decision described in section 161(a) shall become the final decision of the authorized officer without further notice.

(b) RECONSIDERATION.—If a protest is timely filed, the authorized officer shall reconsider the proposed decision in light of the protestant's statement of reasons for protest and in light of other information pertinent to the case.

(c) SERVICE AND NOTIFICATION.—After reviewing the protest, the authorized officer shall serve a final decision on the parties to the proceeding, and notify affected interests of the final decision.

SEC. 164. APPEALS.

(a) IN GENERAL.—

(1) After a final decision takes effect, a period of 30 days shall be provided for filing an appeal. A person who is adversely affected within the meaning of 5 U.S.C. 702 may appeal the decision, pursuant to applicable laws and regulations governing the administrative appeals process of the agency serving the decision.

(2) When a grazing decision is appealed under administrative procedures, the burden of proof shall be on the proponent of the rule or order. The standard of proof shall be by a preponderance of the evidence in the record as a whole.

(b) SUSPENSION PENDING APPEAL.—

(1) IN GENERAL.—An appeal of a final decision shall suspend the effect of the decision pending final action

on the appeal unless the decision is made effective pending appeal under paragraph (2).

(2) EFFECTIVENESS PENDING APPEAL.—The authorized officer may, on the basis of substantial information, order a final decision to remain in full force and effect when failure to act would result in imminent and irreversible resource damage. Full force and effect decisions shall take effect on the date specified, regardless of an appeal.

(c) In the case of an appeal under this section, the authorized officer shall, within 30 days of receipt, forward the appeal, all documents and information submitted by the applicant, permittee, lessee, or lienholder, and any pertinent information that would be useful in the rendering of a decision on such appeal, to the appropriate authority responsible for issuing the final decision on the appeal.

Subtitle H—Advisory Committees

SEC. 171. RESOURCE ADVISORY COUNCILS.

(a) ESTABLISHMENT.—the Secretary of Agriculture and the Secretary of the Interior, in consultation with the Governors of the affected States, shall establish and operate joint Resource Advisory Councils on a State or regional level to provide advice on management issues for all lands administered by the Bureau of Land Management and the Forest Service within such State or regional area, except where the Secretaries determine that there is insufficient interest in participation on a council to ensure that membership can be fairly balanced in terms of the points of view represented and the functions to be performed.

(b) DUTIES.—Each Resource Advisory Council shall advise the Secretaries and appropriate State officials on—

(1) matters regarding the preparation, amendment, and implementation of land use and activity plans for public lands and resources within its area;

(2) major management decisions while working within the broad management goals established for the district or national forest; and on

(3) matters relating to the development of allotment management plans developed pursuant to section 121.

(c) DISREGARD OF ADVICE.—

(1) REQUEST FOR RESPONSE.—If a Resource Advisory Council becomes concerned that its advice is being arbitrarily disregarded, the Resource Advisory Council may, by majority vote of its members, request that the Secretaries respond directly to the Resource Advisory Council's concerns within 60 days after the Secretaries receive the request.

(2) EFFECT OF RESPONSE.—The response of the Secretaries to a request under paragraph (1) shall not—

(A) constitute a decision on the merits of any issue that is or might become the subject of an administrative appeal; or

(B) be subject to appeal.

(d) MEMBERSHIP.—

(1) The Secretaries, in consultation with the governor of the affected State or States, shall appoint the members of each Resource Advisory Council. A council shall consist of not less than nine members and not more than fifteen members.

(2) In appointing members to a Resource Advisory Council, the Secretaries shall provide for balanced and broad representation from among various groups, including but not limited to, permittees and lessees, other commercial interests, recreational users, representatives of recognized local environmental or conservation organizations, educational, professional, or academic interests, representatives of State and local government or governmental agencies, Indian tribes, and other members of the affected public.

(3) The Secretaries shall appoint at least one elected official of general purpose government serving the people of the area of each Resource Advisory Council.

(4) No person may serve concurrently on more than one Resource Advisory Council.

(5) Members of a Resource Advisory Council must reside in one of the States within the geographic jurisdiction of the council.

(e) SUBGROUPS.—A Resource Advisory Council may establish such subgroups as the council deems necessary, including but not limited to working groups, technical review teams, and rangeland resource groups.

(f) TERMS.—Resource Advisory Council members shall be appointed for two-year terms. Members may be appointed to additional terms at the discretion of the Secretaries.

(g) FEDERAL ADVISORY COMMITTEE ACT.—Except to the extent that it is inconsistent with this subtitle, the Federal Advisory Committee Act shall apply to the Resource Advisory Councils established under this section.

(h) OTHER FLPMA ADVISORY COUNCILS.—Nothing in this section shall be construed as modifying the authority of the Secretaries to establish other advisory councils under section 309 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1739).

SEC 172. GRAZING ADVISORY COUNCILS.

(a) ESTABLISHMENT.—The Secretary, in consultation with the Governor of the affected State and with affected counties, shall appoint not fewer than five nor more than nine persons to serve on a Grazing Advisory Council for each district and each national forest within the 17 contiguous western States having jurisdiction over more than 500,000 access of public lands subject to commercial livestock grazing. The Secretaries may establish joint Grazing Advisory Councils wherever practicable.

(b) DUTIES.—The duties of Grazing Advisory Councils established pursuant to this section shall be to provide advice to the Secretary concerning management issues di-

rectly related to the grazing of livestock on public lands, including—

(1) range improvement objectives;

(2) the expenditure of range improvement or betterment funds under the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901 et seq.) or the Taylor Grazing Act (43 U.S.C. 315 et seq.);

(3) development and implementation of grazing management programs; and

(4) range management decisions and actions at the allotment level.

(c) DISREGARD OF ADVICE.—

(1) REQUEST FOR RESPONSE.—If a Grazing Advisory Council becomes concerned that its advice is being arbitrarily disregarded, the Grazing Advisory Council may, by unanimous vote of its members, request that the Secretary respond directly to the Grazing Advisory Council's concerns within 60 days after the Secretary receives the request.

(2) EFFECT OF RESPONSE.—The response of the Secretary to a request under paragraph (1) shall not—

(A) constitute a decision on the merits of any issue that is or might become the subject of an administrative appeal; or

(B) be subject to appeal.

(d) MEMBERSHIP.—The members of a Grazing Advisory Council established pursuant to this section shall represent permittees, lessees, affected landowners, social and economic interests within the district or national forest, and elected State or county officers. All members shall have a demonstrated knowledge of grazing management and range improvement practices appropriate for the region, and shall be residents of a community within or adjacent to the district or national forest, or control a permit or lease within the same area. Members shall be appointed by the Secretary for a term of two years, and may be appointed for additional consecutive terms. The membership of Grazing Advisory Councils shall be equally divided between permittees or lessees, and other interests: *Provided,* That one elected State or county officer representing the people of an area within the district or national forest shall be appointed to create an odd number of members.

(e) FEDERAL ADVISORY COMMITTEE ACT.—Except to the extent that it is inconsistent with this subtitle, the Federal Advisory Committee Act shall apply to the Grazing Advisory Councils established pursuant to this section.

SEC. 173. GENERAL PROVISIONS.

(a) DEFINITION OF DISTRICT.—For the purposes of this subtitle, the term "district" means—

(1) a grazing district administered under section 3 of the Act of June 28, 1934 (commonly known as the "Taylor Grazing Act") (48 Stat. 1270, chapter 865; 43 U.S.C. 315b); or

(2) other lands within a State boundary which are eligible for grazing pursuant to section 15 of the Act of June 28, 1934 (commonly known as the ''Taylor Grazing Act'') (48 Stat. 1270, chapter 865; 43 U.S.C. 314m).

(b) TERMINATION OF SERVICE.—The Secretary may, after written notice, terminate the service of a member of an advisory committee if—

(1) the member—

(A) no longer meets the requirements under which appointed;

(B) fails or is unable to participate regularly in committee work; or

(C) has violated Federal law (including a regulation); or

(2) in the judgment of the Secretary, termination is in the public interest.

(c) COMPENSATION AND REIMBURSEMENT OF EXPENSES.—A member of an advisory committee established under sections 171 or 172 shall not receive any compensation in connection with the performance of the member's duties as a member of the advisory committee, but shall be reimbursed for travel and per diem expenses only while on official business, as authorized by 5 U.S.C. 5703.

SEC. 174. CONFORMING AMENDMENT AND REPEAL.

(a) AMENDMENT.—The third sentence of section 402(d) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1752(d)) is amended by striking ''district grazing advisory boards established pursuant to section 403 of the Federal Land Policy and Management Act (43 U.S.C. 1753)'' and inserting ''Resource Advisory Councils and Grazing Advisory Councils established under section 171 and section 172 of the Public Rangelands Management Act of 1995''.

(b) REPEAL.—Section 403 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1753) is repealed.

Subtitle I—Reports

SEC. 181. REPORTS.

(a) IN GENERAL.—Not later than March 1, 1997, and annually thereafter, the Secretaries shall submit to Congress a report that contains—

(1) an itemization of revenues received and costs incurred directly in connection with the management of grazing on Federal land; and

(2) recommendations for reducing administrative costs and improving the overall efficiency of Federal rangeland management.

(b) ITEMIZATION.—If the itemization of costs under subsection (a)(1) includes any costs incurred in connection with the implementation of any law other than a statute cited in section 102, the Secretaries shall indicate with

specificity the costs associated with implementation of each such statute.

TITLE II—MANAGEMENT OF NATIONAL GRASSLANDS

SEC. 201. SHORT TITLE.

This title may be cited as the "National Grasslands Management Act of 1995".

SEC. 202. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) the inclusion of the National Grasslands within the National Forest System has prevented the Secretary of Agriculture from effectively administering and promoting grassland agriculture on National Grasslands as originally intended under the Bankhead-Jones Farm Tenant Act;

(2) the National Grasslands can be more effectively managed by the Secretary of Agriculture if administered as a separate entity outside of the National Forest System; and

(3) a grazing program on National Grasslands can be responsibly carried out while protecting and preserving recreational, environmental, and other multiple uses of the National Grasslands.

(b) PURPOSE.—The purpose of this title is to provide for improved management and more efficient administration of grazing activities on National Grasslands while preserving and protecting multiple uses of such lands, including but not limited to preserving hunting, fishing, and recreational activities, and protecting wildlife habitat in accordance with applicable laws.

SEC. 203. DEFINITIONS.

As use in this title, the term—

(1) "National Grasslands" means those areas managed as National Grasslands by the Secretary of Agriculture under title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1010–1012) on the day before the date of enactment of this title; and

(2) "Secretary" means the Secretary of Agriculture.

SEC. 204. REMOVAL OF NATIONAL GRASSLANDS FROM NATIONAL FOREST SYSTEM.

Section 11(a) of the Forest Rangeland Renewable Resource Planning Act of 1974 (16 U.S.C. 1609(a)) is amended by striking the phrase "the national grasslands and land utilization projects administered under title III of the Bankhead-Jones Farm Tenant Act (50 Stat. 525, 7 U.S.C. 1010–1012),".

SEC. 205. MANAGEMENT OF NATIONAL GRASSLANDS.

(a) IN GENERAL.—The Secretary shall manage the National Grasslands as a separate entity in accordance with this title and the provisions and multiple use purposes of

title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1010–1012).

(b) GRAZING ACTIVITIES.—In furtherance of the purposes of this title, the Secretary shall administer grazing permits and implement grazing management decisions in consultation, cooperation, and coordination with local grazing associations and other grazing permit holders.

(c) REGULATIONS.—The Secretary shall promulgate regulations to manage and protect the National Grasslands, taking to account the unique characteristics of the National Grasslands and grasslands agricultural conducted under the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1010). Such regulations shall facilitate the efficient administration of grazing and provide protection for the environmental, wildlife, wildlife habitat, and Federal lands in a manner that is consistent with that on the National Grasslands on the May 25, 1995.

(d) CONFORMING AMENDMENT TO BANKHEAD-JONES ACT.—Section 31 of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1010) is amended to read as follows:

"To accomplish the purposes of title III of this Act, the Secretary is authorized and directed to develop a separate program of land conservation and utilization for the National Grasslands, in order thereby to correct maladjustments in land use, and thus assist in promoting grassland agriculture and secure occupancy and economic stability of farms and ranches, controlling soil erosion, reforestation, preserving and protecting natural resources, protecting fish and wildlife and their habitat, developing and protecting recreational opportunities, and facilities, mitigating floods, preventing impairment of dams and reservoirs, developing energy resources, conserving surface and subsurface moisture, protecting the watersheds of navigable streams, and protecting the public lands, health, safety and welfare, but not to build industrial parks or commercial enterprises.".

(e) HUNTING FISHING, AND RECREATIONAL ACTIVITIES.—Nothing in this title shall be construed as limiting or precluding hunting or fishing activities on National Grasslands in accordance with applicable Federal and State laws, nor shall appropriate recreational activities be limited or preclude.

(f) VALID EXISTING RIGHTS—

(1) IN GENERAL.—Nothing in Act title shall affect valid existing rights, reservations, agreements, or authorizations. Section 1323(a) of Public Law 96–487 shall continue to apply to nonfederal land and interests therein within the boundaries of the National Grasslands.

(2) INTERIM USE AND OCCUPANCY.—

(A) Until such time as regulations concerning the use and occupancy of the National Grasslands are promulgated pursuant to this title, the Secretary shall regulate the use and occupancy of

such lands in accordance with regulations applicable to such lands on May 25, 1995, to the extent practicable and consistent with the provisions of this Act.

(B) Any applications for National Grasslands use and occupancy authorizations submitted prior to the date of enactment of this Act, shall continue to be processed without interruption and without reinitiating any processing activity already completed or begun prior to such date.

SEC. 206. FEES AND CHARGES.

The fee provided for in section 135 of title I shall be applicable to the lands subject to the provisions of this title.

PURPOSE OF THE MEASURE

S. 1459, as reported by the Committee, would provide for the uniform management of livestock grazing on Federal land and establish a formula for determining the fee to be assessed for grazing livestock thereon. Provisions in title II of the bill would remove the National Grasslands from the National Forest System and require that they be administered by the Forest Service as a separate entity under the Bankhead-Jones Farm Tenant Act.

BACKGROUND AND NEED

Much of the grazing heritage of the Western United States is an outgrowth of the period when settlers migrated there to grow crops and raise animals on "homesteads." Those settlers established a way of life that continues today. Their descendants still attempt to make a living from ranching and livestock grazing, but under different and difficult circumstances. Some of the challenges are the same as those of a century ago: adequate water supplies, disease, and predators. However, the government atmosphere regarding the availability of public land for livestock grazing and attitude toward rangeland management have changed dramatically.

In the early years, as livestock grazing became a part of the West and its economic base, ranchers grazed animals on their own land, and on neighboring land—Federal land—as well. Congress did nothing to legislate against this practice and States encouraged the full and free use of Federal land for livestock grazing.

In the late 1890's and early 1900's, however, the Federal lands were divided through the creation of national forest reserves, and the Forest Service derived authority to manage grazing on national forest lands from its 1897 Organic Act. The unreserved Federal lands, however, remained subject to free and uncontrolled grazing.

Only when it became apparent during the Depression that the rangeland could not continue to support the large number of animals being grazed and that the livestock industry itself was in dire need of assistance, did Congress act. The Taylor Grazing Act, enacted in 1934, was significant in many respects. It was one of the first major conservation laws, and it accomplished several other important objectives.

First, it ended free access to and use of the public range. Second, it established grazing districts on unappropriated and unreserved

public lands and ended large-scale disposition of public lands. Third, it provided authority to classify lands according to their best use for the first time. And, finally, it recognized that the Federal Government has a responsibility to care for Federal land and take into account the people who use it.

Subsequently, the Grazing Service was created to implement the Taylor Grazing Act. It was merged with the General Land Office in 1946—97 years after the creation of the Department of the Interior—to form the Bureau of Land Management.

Hence, for almost 50 years livestock grazing has been administered by two different land management agencies under two different statutory regimes. This has caused confusion and inconsistencies in areas where grazing allotments consist of intermingled parcels of Forest Service, BLM, and private or State lands.

On March 25, 1994, the Department of the Interior published proposed regulations governing grazing on lands administered by the Bureau of Land Management (58 Fed. Reg. 14314). The proposed rules were the subject of an initial 120-day comment period that was scheduled to close on July 28, 1994. The comment period was extended to run through September 9, 1994. Numerous public meetings were held by the Department on the proposed regulations.

The Committee on Energy and Natural Resources held a series of hearings on the proposed regulations in Washington, D.C. on April 20, 1994; in Albuquerque, New Mexico on May 14, 1994; in Twin Falls, Idaho on July 8, 1994; in Richfield, Utah on July 11, 1994; and in Casper, Wyoming on July 15, 1994 (S. Hrg. 103–655).

Final grazing regulations were promulgated by the Department on February 22, 1995 (60 Fed. Reg. 9894). As a result of an informal agreement reached with several members of Congress, the regulations did not take effect until August 21, 1995.

Based on concerns about the sweeping nature of the new Interior Department grazing management regulations, several Western members of Congress prepared legislation to assure that livestock grazing could continue to be a part of the economic base of the West and the culture that has been handed down from generation to generation. There also were concerns about the scope of grazing regulations the Forest Service is developing. To address those concerns, the sponsors sought to develop legislation that would adopt portions of the BLM grazing regulations, as well as elements of the new rules.

Legislation (S. 852) taking a different tack from the Interior Department's regulations was introduced on May 25, 1995, by Senators Domenici, Craig, Brown, Campbell, Hatch, Bennett, Burns, Simpson, Thomas, Kyl, Pressler, Kempthorne, Conrad, Dorgan, Dole, and Gramm. Senators Baucus, Nickles, and Inhofe subsequently joined as co-sponsors of the measure.

A companion bill, H.R. 1713, was introduced in the House the same day and a hearing was held on July 11, 1995 by the Subcommittee on National Parks, Forests and Public Lands of the House Resources Committee.

A hearing was held on S. 852 on June 22, 1995, by the Subcommittee on Forests and Public Land Management. At the business meeting on July 19, 1995, the Committee on Energy and Nat-

ural Resources ordered the measure favorably reported, as amended (Report No. 104–123). Thereafter, S. 852 was placed on the Calendar (No. 158) but has not been considered by the Senate. It is generally conceded that S. 852 has several shortcomings.

Following the reporting of S. 852 in July, a bi-partisan effort was mounted to craft new legislation that would not contain the same deficiencies as S. 852 and that would address issues of concern to members from Western grazing States. That effort culminated in the presentation of text for the Committee to consider reporting as an original bill at the November 30, 1995 business meeting of the Committee.

LEGISLATIVE HISTORY

At the business meeting on November 30, 1995, legislative text was offered by Sens. Domenici, Craig, Kyl, Thomas, Burns, and Campbell of the Committee and were joined by Sens. Bennett, Hatch, Kempthorne, Simpson, Pressler, Baucus, and Dole, who are not members of the Committee, and the Committee ordered an original bill favorably reported.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTE

The Senate Committee on Energy and Natural Resources, in open business session on Thursday, November 30, 1995, by voice vote of a quorum present, recommends that the Senate pass S. 1459 as described herein.

SECTION-BY-SECTION ANALYSIS

SECTION 1.—SHORT TITLE

The title of the Act is the "Public Rangelands Management Act of 1995."

SECTION 2.—EFFECTIVE DATE

This section states that the Act and its amendments and repeals are effective on March 1, 1996. That date marks the beginning of the grazing season in 1996. Until then, management of livestock grazing shall be conducted pursuant to the law and regulations in effect on February 1, 1995. The section further provides that membership of the resource advisory councils established by the Secretary of the Interior after August 21, 1995 shall be deemed to be in compliance with the provisions of section 171(d) until March 1, 1997, and authorizes the councils to continue under their current charters until March 1, 1996.

SECTION 3.—APPLICABLE REGULATIONS

This section requires livestock grazing on lands administered by the Department of the Interior's Bureau of Land Management (BLM) to be conducted in accordance with federal regulations in effect on February 1, 1995. It also requires grazing on lands administered by the Forest Service to be conducted according to regulations that are substantially similar to the BLM regulations. The Secretary of Agriculture is required to promulgate regulations applicable to Forest Service lands which can deviate from the rules appli-

cable to BLM to the extent necessary to conform to National Forest System laws. The Secretaries of Interior and Agriculture are required to coordinate the promulgation of substantially similar regulations.

SECTION 101.—FINDINGS

This section provides Congressional findings, of which several are worth emphasis. Multiple use, as set forth in current law, has been and will continue to be a guiding principle in the management of public lands and national forests. Through cooperative and concerted efforts, the Federal rangelands are in the best condition they have been in during this century and their condition continues to improve. As a result, wildlife populations are increasing and stabilizing in vast areas of the West. Grazing preferences must continue to be adequately safeguarded in order to promote the economic stability of the Western livestock industry. It is in the public interest to charge a fee for livestock grazing that reflects a fair return to the Federal Government and promotes continuing cooperative stewardship efforts. Greater local input into the management of the public rangelands is in the best interests of the United States. Maintaining the economic viability of the western livestock industry is essential to maintaining open space and fish and wildlife habitat. The levels of livestock that were authorized to be permitted as of August 1, 1993, are consistent with title I and may be increased or decreased, as appropriate, consistent with title I.

The remaining findings are self-explanatory.

SECTION 102.—APPLICATION OF ACT

This section states that the Act applies to the management of grazing on lands administered by the Secretaries of Interior and Agriculture under various statutes and laws.

The section clarifies that nothing in the Act authorizes grazing in any unit of the National Park System, National Wildlife Refuge System, or on any other Federal lands where such use is prohibited by statute, nor supersedes or amends any limitation on the levels of use for grazing that may be specified in other Federal law, nor expands or enlarges any such prohibition or limitation.

The section also declares that nothing in title I shall limit or preclude the use of and access to Federal land for fishing, hunting, recreational, watershed management or other appropriate multiple use activities in accordance with applicable Federal and State laws and the principles of multiple use.

SECTION 103.—OBJECTIVE

The statement of objectives is self-explanatory.

SECTION 104.—DEFINITIONS

The term "Affected interest" means an individual or organization that has expressed in writing to the authorized officer a desire to be notified in writing of proposed decisions of the authorized officer related to a specific grazing allotment.

"Coordinated resource management" means the planning and implementation of management activities in a specified geographic

area that require the coordination and cooperation of the BLM and Forest Service with affected State agencies, private land owners and federal land users. It may include, but is not limited to, practices that provide for conservation, resource protection, resource enhancement or integrated management of multiple-use resources.

The term "grazing permit or lease" means a document authorizing the use of the Federal land: within a grazing district under section 3 of the Taylor Grazing Act; outside grazing districts under section 15 of the Taylor Grazing Act; and in a national forest under section 19 of the Granger-Thye Act of 1950.

"Service Area" means the area that can be properly grazed by livestock watering at a certain water.

the term "monitoring" means the orderly collection of data using scientifically-based techniques to determine trend and condition of rangeland resources. Data collected may include historical information, but must be statistically reliable to evaluate effects of ecological changes and management actions and effectiveness of actions in meeting management objectives.

"Rangeland study" means a documented study or analysis of data obtained on actual use, utilization, climatic conditions, other special events, production trend, and rangeland condition and trend to determine whether management objectives are being met that: rely on examination of physical measurements of range attributes and not on cursory visual scanning of land, unless the condition to be assessed is patently obvious and requires no physical measurements; utilize scientifically based and statistically verifiable methodology; and are accepted by an authorized officer.

"Utilization" means the percentage of a year's forage production consumed or destroyed by herbivores.

The remaining definitions are self-explanatory.

SECTION 105.—FUNDAMENTALS OF RANGELAND HEALTH

This section is self-explanatory. Subsection (a) requires the Secretaries of the Interior and Agriculture to establish standards and guidelines for addressing rangeland condition and trend on a State or regional basis in consultation with the Resource Advisory Committees established in section 171 and in cooperation with State departments of agriculture or other appropriate State agencies and academic institutions in each interested State.

Subsection (b) requires the Secretaries, where appropriate, to authorize and encourage use of coordinated resource management practices that are: scientifically based; consistent with the goals and objectives of the applicable land use plan; for the purposes of promoting good stewardship of multiple-use rangeland resources; and authorized under a cooperative agreement with a permittee or lessee, or an organized group of permittees or lessees in a specified geographic area. Such agreements can include other individuals, organizations, or Federal land users.

Subsection (c) authorizes and directs the Secretaries to enter into cooperative agreements to coordinate the activities of the BLM, Forest Service and the Natural Resources Conservation Service where coordinate resources management involves private, State and Federal land managed by the BLM and Forest Service.

Subsection (d) declares that nothing in title I or any other law should be construed to imply that minimum national standards or guidelines are necessary.

SECTION 106.—LAND USE PLANS

This section is self-explanatory.

Subsection (a) requires an authorized officer to manage livestock grazing on Federal land under the principles of multiple-use and sustained yield and in accordance with applicable land use plans.

Subsection (b) declares that land use plans shall: consider the impacts of all multiple uses, including livestock and wildlife grazing, on the environment and the condition of the public rangelands as well as the contributions of these uses to the management, maintenance and improvement of the rangelands; establish allowable grazing use in combination with other multiple uses, related levels of production or use to be maintained, areas of use, and resource condition goals and objectives to be obtained; and set forth programs and general management practices needed to achieve the purposes of title I.

Subsection (c) provides that land use plans and amendments thereto shall continue to be developed in accordance with the National Environmental Policy Act (NEPA).

Subsection (d) declares that livestock grazing activities and management actions approved by an authorized officer, including the issuance, renewal or transfer of grazing permits or leases, shall not constitute major Federal actions requiring consideration under NEPA in addition to that which is necessary to support the land use plan and amendments thereto.

Subsection (e) clarifies that nothing in this section is intended to override the planning and public involvement processes of any other federal law pertaining to federal lands, including public participation in the NEPA process itself.

SECTION 111.—SPECIFYING GRAZING PREFERENCE

This section is self-explanatory.

SECTION 121.—ALLOTMENT MANAGEMENT PLANS

This section is self-explanatory.

SECTION 122.—RANGE IMPROVEMENTS

This section is self-explanatory.

SECTION 123.—MONITORING AND INSPECTION

Subsection (a) requires that monitoring be performed by qualified Federal, State, or local agency personnel, qualified consultants as agreed to in an approved allotment management plan, or qualified range consultants retained by the United States. The subsection further provides that any report on such monitoring must include any comments from comparably qualified range consultants participating in such monitoring activities at the request of the permittee or lessee.

Subsection (b) is self-explanatory.

Subsection (c) states that rangeland monitoring shall be conducted according to scientifically based regional or State criteria and protocols that shall be developed in consultation with the Resource Advisory Committees established in section 171 and in cooperation with State departments of agriculture or other appropriate State agencies and academic institutions.

Subsection (d) requires that the affected permittee or lessee, or authorized representative, be invited and allowed to participate in inspections or activities in which information or data are gathered for consideration in management decisions by the authorized officer. Information or data gathered in violation of this requirement shall not be relied upon and shall be excluded from the permittee's or lessee's allotment file.

Subsection (e) provides exceptions to the requirements of subsection (d) that are self-explanatory.

SECTION 124.—WATER RIGHTS

Subsection (a) declares that no water rights on Federal land shall be acquired, perfected, owned, controlled, maintained, administered, or transferred in connection with livestock grazing management other than in accordance with State law concerning use and appropriation of water within the State.

Subsection (b) requires the Secretary, in managing livestock grazing on Federal land, to follow State law with regard to water right ownership and appropriation.

Subsection (c) prohibits the Secretary from imposing or requiring any transfer, restriction, or limitation on the use of any water right as a term or condition of any permit, or as a requirement for approval of the transportation, storage, or conveyance of water on or across Federal land.

Subsection (d) declares that nothing in title I shall be construed to create an express or implied reservation of water rights in the United States.

SECTION 131.—GRAZING PERMITS OR GRAZING LEASES

This section is self-explanatory.

SECTION 132.—SUBLEASING

This section is self-explanatory.

SECTION 133.—OWNERSHIP AND IDENTIFICATION OF STOCK

This section is self-explanatory.

SECTION 134.—TERMS AND CONDITIONS

This section is self-explanatory.

SECTION 135.—FEES AND CHARGES

The term "animal unit month" (AUM) means one month's use and occupancy of the range by (1) one cow, bull, steer, heifer, horse, burro, or mule, seven sheep, or seven goats, each of which is six months of age or older on the date on which the animal begins grazing on Federal land; (2) any such animal regardless of age if the animal is weaned on the date on which the animal begins graz-

ing on Federal land; and (3) any such animal that will become 12 months of age during the period of use authorized under a grazing permit or lease.

The fee for each AUM to be determined by the Secretaries of the Interior and Agriculture shall be equal to the three-year average of the total gross value of production of beef cattle for the three years preceding the grazing fee year, multiplied by the 10-year average of the United States Treasury Securities 6-month bill "new issue" rate, and divided by 12. The gross value of production of beef cattle shall be determined by the Economic Research Service (ERS) of the Department of Agriculture.

The remaining provisions of the section are self-explanatory.

SECTION 141.—CIVIL VIOLATIONS AND FAILURES OF COMPLIANCE

This section is self-explanatory.

SECTION 151.—NONMONETARY SETTLEMENT

This section is self-explanatory.

SECTION 152.—IMPOUNDMENT AND SALE

This section is self-explanatory.

SECTION 161.—PROPOSED DECISIONS

This section is self-explanatory. Subsection (a) requires that the authorized officer serve, by certified mail or personal delivery, a proposed decision on any applicant, permittee, lessee, or lienholder that is affected by a proposed action on an application for a grazing permit or lease, or range improvement permit, or by a proposed action relating to a term or condition of a grazing permit or lease, or a range improvement permit.

Subsection (b) requires the authorized officer to send copies of proposed decisions to affected interests.

Subsection (c) requires that a proposed decision: state the reasons for the action, including reference to applicable law; be based upon and supported by rangeland studies, where appropriate; and state that any protest of a proposed decision must be filed not later than 30 days after service.

SECTION 162.—PROTESTS

This section requires that an applicant, permittee, or lessee protest a proposed decision under section 161 within 30 days after service of the proposed decision.

SECTION 163.—FINAL DECISIONS

Subsection (a) declares that, absent a timely filed protest, a proposed decision shall become final without further notice.

Subsection (b) states that a timely filed protest requires the authorized officer to reconsider the proposed decision in light of a protestant's statement of reasons for protest and other pertinent information.

Subsection (c) requires the authorized officer, after reviewing the protest, to serve a final decision on parties to a proceeding and notify affected interests of the final decision.

SECTION 164.—APPEALS

Subsection (a) provides a period of 30 days for filing an appeal after a final decision takes effect. A person who is adversely affected within the meaning of 5 U.S.C. 702 may appeal a final decision, pursuant to applicable laws and regulations governing the administrative appeals process of the agency serving the decision. When an appeal is taken, the burden of proof shall be by a preponderance of the evidence and shall be on the proponent of the rule or order.

Subsection (b) An appeal of a final decision shall suspend the effect of a decision pending final action unless it is made effective pending appeal. The authorized officer may, on the basis of substantial information, order a final decision to remain in full force and effect pending appeal, effective on the date specified, when failure to act would result in imminent and irreversible resource damage.

Subsection (c) requires the authorized officer, when an appeal is taken, to forward the appeal and all documents and information supplied by the appellant, as well as any pertinent information that would be useful in rendering a decision, to the authority responsible for issuing the final decision on the appeal.

SECTION 171.—RESOURCE ADVISORY COUNCILS

This section directs the establishment of Resource Advisory Councils (RACs) by the Secretaries of Interior and Agriculture on a State or regional level to advise on management issues for all lands administered by the Bureau of Land Management and the Forest Service. The section also sets forth the duties and membership of RACs, subgroups, terms, and other provisions relating to the RACs.

SECTION 172.—GRAZING ADVISORY COUNCILS

This section directs the establishment of Grazing Advisory Councils (GACs) by the Secretaries of the Interior and Agriculture for each district and national forest within the 17 contiguous Western States to advise on management issues related to livestock grazing on public lands. The Secretaries are authorized to establish joint GACs wherever practicable. The section also sets forth the duties and membership of the GACs.

SECTION 173.—GENERAL PROVISIONS

The provisions of this section are self-explanatory.

SECTION 174.—CONFORMING AMENDMENT AND REPEAL

This section conforms the Resource Advisory Council and Grazing Advisory Council provisions of the bill to the Federal Land Policy and Management Act.

SECTION 181.—REPORTS

This section is self-explanatory.

TITLE II. MANAGEMENT OF NATIONAL GRASSLANDS

SECTION 201.—SHORT TITLE

This section is self-explanatory.

SECTION 202.—FINDINGS AND PURPOSE

This section is self-explanatory.

SECTION 203.—DEFINITIONS

This section is self-explanatory.

SECTION 204.—REMOVAL OF NATIONAL GRASSLANDS FROM NATIONAL FOREST SYSTEM

This section is self-explanatory.

SECTION 205.—THIS SECTION IS SELF-EXPLANATORY

Subsection (f) states that nothing in title II shall affect valid existing rights, reservations, agreements, or authorizations. The Committee intends that use and occupancy on National Grasslands remain in effect under current rules until new programs, plans and rules are implemented, and that processing activities for any such authorizations should not be interrupted or be repeated. The subsection also specifies that section 1323(a) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3210(a)) shall continue to apply to nonfederal land and interests therein within the boundaries of the National Grasslands upon their removal from the National Forest System.

COST AND REGULATORY CONSIDERATIONS

The Congressional Budget Office estimate of the costs of this measure has been requested but was not received at the time the report was filed. When the report is available, the Chairman will request that it be printed in the Congressional Record for the advice of the Senate.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in implementing S. 1459. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economics responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

There are likely to be significant paperwork requirements for the Forest Service.

EXECUTIVE COMMUNICATIONS

On November 17, 1995, Senator Murkowski requested the views of the Department of Agriculture and the Department of the Interior on a November 14, 1995 Staff Draft of S. 1459. The responses follow:

U.S. DEPARTMENT OF AGRICULTURE,
FOREST SERVICE,
Washington, DC, December 4, 1995.

Hon. FRANK H. MURKOWSKI,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your request for the views of the Forest Service on the November 14, 1995, Staff Draft bill, the Public Rangelands Management Act of 1995. I understand that your Committee marked up this bill on November 30, 1995.

Secretary Glickman sent you a letter expressing the Administration's official position on this legislation. Since the bill would have major impacts on the Forest Service and the resources we manage, I want to provide our technical view to you and members of the Committee.

The original version of S. 852, the Livestock Grazing Act, only included two areas of direct concern to the Forest Service—the sections dealing with grazing fees and management of the National Grasslands. Therefore, my testimony of June 22, 1995, was limited to those items. The Forest Service has a number of major concerns with the provisions of this new bill in its present form. These specific concerns are spelled out in the enclosed technical line-by-line analysis.

I assure you that if the original bill in its entirety has applied to the Forest Service, my testimony would have been much more expansive. As the bill has now been modified to include the 191 million acres of land managed by the Forest Service, I would appreciate a chance to testify at another hearing on this matter. The bill would make *massive* changes on how grazing would be administered on lands managed by the Forest Service.

Please let me know if I or my staff can be of any further assistance as you consider this bill.

Sincerely,

JACK WARD THOMAS, *Chief.*

Enclosure.

PUBLIC RANGELANDS MANAGEMENT ACT OF 1995

P. 2, LINES 2–16

This provision would require the Forest Services to conduct costly, time-consuming rulemaking less than 2 years after conducting a similar rulemaking. Additionally, tying the management of grazing to the regulations in effect on a specific date would limit the Secretary's discretion to manage grazing on National Forest System lands.

P. 2, LINES 23–26

This statement, though true, is misleading. There are still significant problems with range conditions on 8.2 million acres of Federal land. There are significant problems with the riparian zones. Such problems should be acknowledged.

P. 3, LINES 1–2

This statement is only partially true. Some species, particularly those that are not habitat generalists, have declined markedly. Others, such as mule deer, have also been in decline. Aquatic species have declined dramatically and continue to decline with approximately 85 species listed as threatened or endangered and 46 species considered at risk. Land use practices, including grazing, are major contributors to the decline of aquatic species.

P. 3, LINES 10–17

The cost and complexity of administering range programs as specified in this bill would be dramatically increased. For example, the monitoring requirements would be prohibitively expensive. Congress will need to provide funds and personnel to cover these increases.

P. 4. LINES 5–6

This language does not accurately state Section 6(a) of the National Forest Management Act which requires the coordination of, not consistency with, the land use planning processes of state, local, and Tribal governments.

P. 4, LINES 7–9

This legislatively recognizes grazing stocking rates at the August 1, 1993, level as acceptable and does not take into account the need for land managers to adjust use patterns as necessary to protect basic resources.

P. 5, LINES 2–16

When the Chief of the Forest Service testified before the Committee on Energy and Natural Resources, Subcommittee on Forests and Public Land Management, on June 22, 1995, only two provisions in S. 852 affected programs under the jurisdiction of the Secretary of Agriculture: Title I, Section 137, concerning grazing fees, and Title II, Section 201, which would remove National Grasslands from the National Forest System. If the Forest Service had been included in the remaining provisions of the bill, the Chief's testimony would have voiced strong opposition to a number of provisions. Adding the Forest Service's 191,000,000 acres to the bill is a dramatic change. This should, in and of itself, justify a new round of hearings.

P. 6, LINES 7–8

The bill does provide stability to the livestock industry (line 7). This comes largely from prescribing monitoring standards that would be so expensive and times consuming that monitoring could not be accomplished given current resources.

P. 6, LINES 20–23

The definition of "Affected Interest" is far too constraining a term and is designed to dramatically reduce the ability of citizens of the

United States to influence the management of lands that they own in common.

P. 8, LINES 21–23

This changes the definition of "grazing preference" from priority for renewal of a term grazing permit to the number of AUM's attached to base property. This is a dramatic change which would further restrict the ability of managers to adjust animal numbers and use patterns as necessary to protect basic resources.

P. 9, LINES 9–11

The term "long-term damage" needs to be defined. As defined, "Livestock Carrying Capacity" will necessitate establishing stocking rates that will result in damage to rangeland resources.

P. 9, LINES 12–17 AND P. 10, LINES 2–10

The requirement for "statistically reliable" data is dramatic in terms of costs and feasibility. "Statistically reliable" begs definition. Reliable at what levels of confidence? Such a requirement for every allotment draws resources and personnel away from on-the-ground resource management. The time frames within which "ecological changes" (which is underfined) occur can be very long. Some changes (or problems) are so glaringly obvious that no such measurements are needed. Unless Congress intends to fund the costs of such a requirement this is a prescription for no change.

P. 10, LINES 18–24

This is a dramatic change in (present and traditional) Forest Service policy. Such a dramatic change should be the subject of hearings.

P. 11, LINE 6–10

Having "science" don on a state or regional basis and involving two additional sets of "experts" is a prescription for confusion. States (and Universities) are not staffed or funded to do this work. Who pays? How much will it cost? Do the states and academics want to take on the chore? What if they decline?

P. 11, LINE 14

The term "scientifically based" should be defined.

P. 11, LINES 18–19

Why only authorize cooperative agreements with permittees or lessees as part of "Coordinated Resource Management"? Who are the other players? Why are they not specifically identified?

P. 12, LINE 9

"Rangelands" needs to be defined. Much of the grazing on National Forests takes place on "forest lands".

P. 12, LINES 8–15

Are these activities to be achieved using the same high standards of science and statistical reliability required to adjust a grazing permit? If not, why not? These are the critical decisions that will stand until modified by rigorous monitoring.

P. 12, LINES 19–13

This is inconsistent with meeting the ongoing obligations of the National Environmental Policy Act, the National Forest Management Act, the Endangered Species Act, and other environmental laws. A change between a plan and permit or lease could well have a significant impact on the environment, or there could be a significant impact on a listed species.

P. 14, LINES 6–19

This is a dramatic change in Forest Service policy and affords an "ownership" interest in permanent structural improvements on public lands. Such a change warrants a hearing. The ramifications of these provisions should be fully examined.

P. 14, LINES 24–27

This provides an "incentive" to obtain ownership. This exacerbates the potential problems put forward in P. 14, lines 6–19.

P. 15, LINES 5–19

Why is such a provision offered to grazing interests and not to other users of public lands?

P. 15, LINES 11–13

This gives the permittee total control over stock ponds and wells. The permittee could prevent the use of that water by other ungulates—deer, elk, antelope, wild horses. On some ranges, water is critical to such animals. Such rights should never be so assigned.

P. 15, LINES 14–17

Why should the Federal Government be involved in a deal between willing buyers and sellers?

P. 15, LINES 19–26

What is the standard for determining "scientifically qualified" personnel?

P. 15, LINE 27 AND P. 16, LINES 1–4

Ecological protocols are not limited to state lines. If such "protocols" are "scientifically based" they would not differ except in race causes. The development of 25–35 different sets of protocols in consultation with all those described would likely produce a tangle that would lead to technically ludicrous results. Who pays for the participation of the State Department of Agriculture and State Agencies and "academic" institutions?

P. 16, LINES 5–10

Why is only the permittees provided such a privilege? Should this not be extended to all parties with a vested interest such as State Wildlife Departments, concerned citizens, etc.?

P. 16, LINES 25–27 AND P. 17, LINES 1–3

This section appears to give control over the exercise of water rights to the permittee. This could allow the permittee to exclude wildlife, and the public, from any water. Because the water could be transported across Federal land to private land, any lack of control over the exercise of water rights on Federal Land could allow the Federal Land to be "locked up" by the specific permittee. Many western lands exist in such a state that control of water is essential for the proper management and control of the land. Does this provision override the Endangered Species Act? This provision appears to give virtually total control of water on arid rangelands to permittees.

P. 17, LINES 12–14

Define "appropriate and accepted resource analysis and evaluation"—judged "appropriate" by whom, "accepted" by whom?

P. 17, LINES 24–27 AND P. 18, LINES 1–9

This is a dramatic change in Forest Service policy. This is "subleasing" pure and simple and implies an ownership right because it authorizes the conveyance of grazing privileges between private parties.

P. 18, LINES 13–14

There are sometimes excellent reasons for requiring marking or tagging livestock beyond that required by State law. This is an opening for permit violations. Has an analysis of the various state laws marking requirements been done?

P. 18, LINES 23–26

"Modifications" would be unlikely because of the cost and complexity of monitoring required. The monitoring requirements would make it virtually impossible for the authorizing official to deal with "bad stewards."

P. 19, LINES 1–8

The language on fees has changed. What is the derivation of this grazing fees formula? This should be carefully reviewed and be the subject of a hearing.

P. 19, LINES 18–19

This would mean that the permittee could bring 5–6 month old calves onto the allotment. This provides a "bonus" of grazing of an animal between the ages of 6 and 12 months. Who would know if the calf is the "progeny" of what or whose cow?

P. 20, LINES 18–19

The "knowing and willful" standard would make it difficult, if not impossible, to prove a violation or non-compliance.

P. 21, LINES 18–19

Again, the burden of proof is to prove "willful" violations. The same concern applies to the second violation.

P. 21, LINES 23–24

This provision could diminish the Agency's ability to impose meaningful penalties for intentional violations.

P. 22, LINE 22

How could there be a knowing and willful violation of Section 141 if there is no fault of the livestock operator?

P. 24, LINES 11–13

This provision is a departure from the Administrative Procedures Act under which the standard of proof is arbitrary and capricious and the burden of proof is on the appellant.

P. 24, LINES 5–26

This provision should provide the Secretary with more discretion for lifting the automatic stay, if needed to protect the forest resources.

P. 25, LINE 2

Resource Advisory Councils are a new concept for the Forest Service. This should justify a full hearing as to consequences and costs of such an enormous change in operating procedures. Can the Forest Service absorb the per diem and travel costs involved? Funding available for range programs is already severely inadequate.

P. 25, LINES 12–15

To advise on all listed matters, the Advisory Committee would need to examine hundreds of such items per year. It does not seem likely that such a group could possibly operate without significant professional staff.

P. 26, LINES 5–11

Why should "permittees and lessees" and "other commercial interests" receive designated positions?

P. 27, LINES 2–7

Why do grazing interests have special influence in the form of "Grazing Advisory Councils"? Why are there no "Advisory Councils" for fish and wildlife, recreation, timber, mining, water, etc.? This is a dominant use provision. This could involve nearly 1,000 persons. Can the Forest Service absorb the per diem and travel costs involved? Funding available for range programs is already severely inadequate.

P. 27, LINES 27–28

The membership is designed to insure that Grazing Advisory Councils are dominated by livestock interests. "Grazing" is a use that has dramatic impacts on the land and the ecology of an area.

P. 28, LINES 6–7

The requirement that the Councils be one-half permittees also assures that the Councils will be dominated by grazing interests. This is a dominant use provision.

P. 30–31

Removal of the National Grasslands from the National Forest System weakens the multiple-use management of these lands. Further, such divisions seems likely to produce significant inefficiencies in management by requiring additional separate management units. Further, the requirement to prepare separate management plans and new regulations for National Grasslands is duplicative and inefficient. This change would likely require amendments to affected land and resource management plans. It would appear prudent in these times of significant downsizing in Forest Service personnel and resources to carefully consider costs and benefits of such organizational change prior to enactment of this bill.

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, DC, November 30, 1995.

Hon. FRANK MURKOWSKI,
Chairman, Committee on Energy and Natural Resources, Washington, DC.

DEAR FRANK: I appreciate your November 17, 1995, invitation to comment on the November 14, 1995, proposed substitute of the Public Rangelands Management Act of 1995, to which I will refer to simply as the substitute. Unfortunately, this version of the legislation fails to remedy both the concerns the Chief of the Forest Service presented on the Subcommittee on Forests and Public Lands during its June 22, 1995, hearing and I stated in my July 18, 1995, letter to you. I have very strong objections to the substitute and many of its provisions. In this letter, I wanted to highlight those which cause me the gravest concern.

In sum, the substitute establishes barriers that could restrict or prevent the public from participating fully in making decisions over the use of the public lands. While the substitute states that public lands are to be dedicated to multiple uses, its overall effect would shift the balance in favor of selected purposes, favoring relatively few uses at the expense of the pubic at large.

Not only do I object to the limits section 3 would place on the Department's discretion in managing grazing on national forest system lands, I object to replacing current regulations the Department has developed, with full public participation, with regulations substantially similar to the same as those another Federal land management agency rejected as outdated and out of touch with how the public wants its resources managed.

I believe that section 123, could, in the end, seriously impede the Department's ability to monitor the use and condition of its public lands. Rather than improving the present system, these prohibitively expensive, cumbersome to implement, and unattainable requirements would make it virtually impossible for land managers to adjust use patterns to protect the resource for multiple purposes.

Section 124 is another extremely troublesome congressional attempt to restrict the Forest Service's ability to manage water rights for multiple uses and vests, as do so many other provisions of the substitute, primacy of consideration in a select, narrow range of uses. While the provision would appear to codify existing Forest Service policy on stock watering rights, it would in fact apply limits much more restrictive than those applied to many state land management agencies and in some states, the Forest Service would be precluded altogether from obtaining water rights to manage its lands effectively. By prohibiting the Forest Service from conditioning grazing permits with terms related to associated water rights, the substitute could transfer virtually complete control of water on Federal land to the permittee, possible to the exclusion of all public uses, including wildlife management.

I cannot support the creation, in section 172, of nearly 100 advisory councils dedicated primarily to grazing interest. This is yet another example of the imbalance underlying the draft.

While section 204 maintains this Department's authority to manage the National Grasslands, separating them from the National Forest System does not achieve improved management and imposes and unnecessary, time-consuming, and costly process to revise land and resource management plans and regulations.

While the substitute claims that rangelands are in very good condition, in fact over eight million acres of the public's rangeland remain in unsatisfactory condition. Unless we continue a balanced, prudent approach to managing these lands, they will deteriorate, losing value and utility to everyone, including livestock ranchers and operators, whose interests the Administration wants to protect as much as the interests of other important users of these public resources. Unfortunately, the substitute fails to meet this standard.

I am sending a similar letter to Senator Johnston and copies to other members of the Committee.

With best personal regards, I am.

Sincerely,

DAN GLICKMAN, *Secretary.*

THE SECRETARY OF THE INTERIOR,
Washington, DC, November 29, 1995.

Hon. FRANK MURKOWSKI,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: I appreciate the opportunity to comment on Senator Domenici's proposed substitute version of S. 852, the Public Rangelands Management Act.

The most recent version of S. 852 still fails to address the problems the Department had with the previous bill—lack of public in-

volvement, tying the hands of land managers, and elevating grazing to the dominant use of public land.

The Administration is therefore strongly opposed to enactment of this legislation.

This version introduces radical new concepts of water rights, hobbles the Department's ability to manage and protect western rangelands, and, in doing so, creates more bureaucracy, more red tape, and more delay.

Since the original bill was reported out of Committee, the Department of the Interior's grazing regulations have gone into effect. The Resource Advisory Councils are up and running and have begun to provide the positive cooperative results we expected. None of the doom and gloom predicted by the opponents of rangeland reform has occurred or appears likely to occur. The substitute bill would set us back to the beginning of the rule-making process; it would delay by another three years getting on with the business of improving grazing management on public lands.

While some efforts have been made to sand off the rough edges of S. 852, this new version still fails to address adequately the three major areas of concern that led us to oppose the original bill. Like its predecessor, this bill:

Continues to exclude the public from appropriate public lands decision-making processes.—Although the term "affected interests" is used, it provides no meaningful opportunity for those interests to participate in formulating multiple-use decisions on grazing issues. If, as the bill claims, multiple use is its guiding principle, it is critical to allow participation from all perspectives when making multiple-use decisions. Merely serving notice of proposed and final decisions while excluding parties from meaningful allotment planning and dialogue virtually assures lengthy administrative appeals and public anger.

Limits land managers' ability to protect the environment and the health of public lands.—The bill exempts grazing activities and management actions at site-specific and allotment management plan levels from consideration under the National Environmental Policy Act (NEPA); it establishes prohibitively strict standards for conducting monitoring and rangeland studies; it requires unnecessary and complex monitoring procedures to change permit terms and conditions; it requires detailed allocation and grazing management decisions to be made as part of land use plans. All of these elements will result in unnecessary delays of land management decisions. The bill also automatically stays grazing decisions pending appeal except when failure to act would result in irreversible resource damage.

Elevates livestock grazing to a dominant use of public lands by granting special considerations and privileges.—The bill establishes grazing advisory councils, although no other group of land users enjoys its own single-purpose advisory group. It authorizes sub-leasing while providing no return to the taxpayer for this use, contrary to recent GAO recommendations.

Added to these problems left over from the original bill are two very serious new issues that make this bill much worse than its predecessor:

The Bureau of Land Management's old grazing regulations are frozen, except for the changes in this bill, as of February 1, 1995.—This radical idea strips the Secretary of his long-established authority to regulate use of public land for, among other purposes, livestock grazing and to adjust regulations over time to protect the health of the land. This authority has been confirmed by Congress in the Taylor Grazing Act of 1934 and many subsequent laws. The effect would be to require Congress to micro-manage livestock grazing regulations by approving all future changes.

The substitute bill introduces radical new water rights concepts in relation to the multiple use mandate.—Section 124 of the bill fails to recognize valid existing rights to use water on public lands that have long been recognized in the Western states. Its sweeping language, affecting water rights that have any "connection with livestock grazing management," could adversely impact all kinds of public land water uses, such as for fish, wildlife, wild horses and burros, firefighting, erosion control and for securing Indian water rights. It introduces a potentially radical new concept of "water ownership" that flies in the face of long-established principles of Western water law which grant the right to use water rather than ownership of water. Finally, it could strip away a significant portion of the Secretary's existing authority to protect multiple uses of federal lands by putting inappropriate conditions on mineral leases, rights of way grants and other public land use permits.

Our regulations were developed in the belief that most livestock operators are good stewards with whom federal land managers can work cooperatively to assure healthy sustainable rangelands, but that there are still problem areas and problem operators. In those cases, the land manager must be able to take timely action to protect resource values. Our land managers must be able to address these needs without the excessive costs, long delays, and additional red-tape that would be imposed by is bill.

Sincerely,

BRUCE BABBITT.

MINORITY VIEWS OF SENATORS BUMPERS AND BRADLEY

The Bureau of Land Management and the Forest Service currently charge $1.61 per AUM. This fee is far less than the grazing fees charged on state and private lands. For instance, grazing fees on state lands range from $10.92 to $1.98 per AUM (excluding Arizona which sets its fees as a percentage of the Federal fee). Private land holders impose a fee averaging $10.00 per AUM.

The Committee bill would establish a new fee formula that would primarily be based on the value of beef production. According to the testimony of the National Agricultural Statistics Service and the Economic Research Service of the Department of Agriculture (the two agencies that would administer the new fee), ''there appears to be no rationale for the proposed fee formula.'' The fee formula in the Committee bill would increase the fee at best to $2.10 per AUM and could very well actually produce less in revenues than the current fee. If this formula had been in effect between 1975 and 1991, the Federal government would have received $100 million less.

Some of the proponents of the Committee bill seem to believe that the only people that have an interest in the legislation are those that own animals which graze on federal land. However, the federal government is supposed to act as the guardian of the public lands for all citizens. That includes ensuring that the environment is adequately protected and that the taxpayers are adequately compensated for the use of the public lands just as they would be if they owned the land directly. The current grazing fee and the fee proposed in the Committee bill fall far short of this principle.

At the same time Congress is struggling to balance the budget and is looking to make substantial cuts in spending on Medicaid, Medicare and education, the Committee bill proposes that the federal government continue to receive far less than fair market value for grazing fees. This is unacceptable and must be changed.

DALE BUMPERS.
BILL BRADLEY.

MINORITY VIEWS OF SENATORS BINGAMAN AND DORGAN

On July 19, 1995, the Committee reported S. 852, the previous version of the grazing bill, by a vote of 11–8. At the time, we filed minority views outlining our concerns with S. 852. While this successor bill to S. 852 was ordered reported on a voice vote, we want to make clear that most of our major concerns with S. 852 have not been adequately addressed.

In some areas, this bill is an improvement over S. 852. However, in our opinion, many of S. 852's fundamental problems still exist in this bill. We will continue to work with the bill's proponents in an effort to resolve these concerns before the bill is considered by the Senate.

Like S. 852, this bill goes too far in limiting public participation and involvement in the management and use of public lands with respect to grazing, and it places unnecessary burdens on integrating grazing activities on public lands within a "multiple use" framework. We remain concerned that this bill would dramatically alter grazing management practices on National Forest lands, without the Committee having a complete understanding of the consequences of those changes. And as we have noted previously, we think it is not good policy to legislatively codify administrative regulations. Such an approach severely limits responsible and effective administration of public lands by requiring Congressional approval for future changes.

Finally, we are concerned with the changes made to title II, relating to management of grazing on National Grasslands. Specifically, we are troubled by the removal of the public consultation provision and the elimination of the requirement that environmental protections on National Grasslands be equivalent to protections applicable to National Forest System lands. We will seek to restore these important provisions when the Senate considers this legislation.

JEFF BINGAMAN.
BYRON L. DORGAN.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 1459, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

PUBLIC RANGELANDS IMPROVEMENT ACT OF 1978 (43 U.S.C. 1901–1908)

§ 2. Congressional findings and declaration of policy

(a) The Congress finds and declares that—

[(1) vast segments of the public rangelands are producing less than their potential for livestock, wildlife habitat, recreation, forage, and water and soil conservation benefits, and for that reason are in an unsatisfactory condition;]

[(2) such rangelands will remain in unsatisfactory condition and some areas may decline further under present levels of, and funding for, management;]

[(3) unsatisfactory conditions on public rangelands present a high risk of soil loss, decertification, and a resultant under productivity for large acreage of the public lands; contribute significantly to unacceptable levels of siltation and salinity in major western watersheds including the Colorado River; negatively impact the quality and availability of scarce western water supplies; threaten important and frequently critical fish and wildlife habitat; prevent expansion of the forage resource and resulting benefits to livestock and wildlife production; increase surface runoff and flood danger; reduce the value of such lands for recreational and esthetic purposes; and may ultimately lead to unpredictable and undesirable long-term local and regional climatic and economic changes;]

[(4) The above-mentioned conditions can be addressed and corrected by an intensive public rangelands maintenance, management, and improvement program involving significant increases in levels of rangeland management and improvement funding for multiple-use values;]

[(5)*(1)* to prevent economic disruption and harm to the western livestock industry, it is in the public interest to charge a fee for livestock grazing permits and leases on the public lands which is based on a formula reflecting annual changes in the costs of production; *and*

[(6)*(2)* the Act of December 15, 1971 (85 Stat. 649, 16 U.S.C. 1331 et seq.), continues to be successful in its goal of protecting wild free-roaming horses and burros from capture, branding [harassment] *harassment,* and death, but that certain amend-

ments are necessary thereto to avoid excessive costs in the administration of this Act, and to facilitate the humane adoption or disposal of excess wild free-roaming horses and burros which because they exceed the carrying capacity of the range, pose a threat to their own habitat, fish, wildlife, recreation, water and soil conservation, domestic livestock grazing, and other rangeland values[;].

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§ 6(a). [Repealed]

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976 (43 U.S.C. 1701 et. seq.)

§ 402. Grazing leases and permits.

(d) Allotment management plan requirements

* * * If the Secretary concerned elects to develop an allotment management plan for a given area, he shall do so in careful and considered consultation, cooperation and coordination with the lessees, permittees, and landowners involved, the [district grazing advisory boards established pursuant to section 1753 of this title] *Resource Advisory Councils and Grazing Advisory Councils established under section 171 and section 172 of the Public Rangelands Management Act of 1995* * * *

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§ 6(a). [Repealed]

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FOREST RANGELAND RENEWABLE RESOURCE PLANNING ACT OF 1974 (16 U.S.C. 1609(a))

§ 11. National Forest System

(a) Congressional declaration of constituent elements and purposes; lands etc., included within; return of lands to public domain.

* * * [the national grasslands and land utilization projects administered under title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1010 et seq.)] * * *

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BANKHEAD-JONES FARM TENANT ACT (7 U.S.C. 1010 et seq.)

§ 31.

To accomplish the purposes of title III of this Act, the [The] Secretary is authorized and directed to develop a *separate* program of land conservation and [land] utilization *for the National Grasslands,* in order thereby to correct maladjustments in land use, and thus assist in *promoting grassland agriculture and secure occupancy and economic stability of farms and ranches,* controlling soil erosion, reforestation, preserving *and protecting* natural resources, protecting fish and wildlife *and their habitat,* developing and protecting recreational *opportunities and* facilities, mitigating floods, preventing impairment of dams and reservoirs, developing energy

resources, conserving surface and subsurface moisture, protecting the watersheds of navigable streams, and protecting the public lands, health, safety and welfare, but not to build industrial parks or commercial enterprises.

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